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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992)

Rate Regulation)

MM Docket No. 92-266

COMMENTS OF ADHOC RURAL CONSORTIUM

The rural telephone companies identified below, known as the Ad Hoc Rural Consortium ("ARC")¹, by counsel and pursuant to Section 1.415(a) of the Commission's Rules and Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 92-544, released December 24, 1992 ("NPRM"), hereby submit their Comments with respect to the Commission's proposals relating to rate regulation and the reduction of regulatory burdens for small systems.

Preliminary Statement

The Commission instituted this proceeding to implement the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). All ARC participants are rural telephone companies which provide cable service to their communities pursuant to Section 613(b)(3) of the Communications Act of 1934, as

¹ The Companies are Moultrie Telecommunications, Inc., Lovington, Illinois; RGA Cable, Toledo, Washington; Video Inc., Bay Springs, Mississippi; Cross Cable Television, Inc., Warner, Oklahoma; Springcom, Inc., Springport, Michigan; Waitsfield Cable, Waitsfield, Vermont; Eustis Telephone Exchange, Brady, Nebraska; Hinton CATV, Hinton, Oklahoma; and Fort Mojave Telecommunications, Inc., Needles, California.

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amended. The Companies serve sparsely populated, primarily rural areas, which may not otherwise have access to cable service or, at least, would have received cable service on a delayed basis. ARC directs its comments specifically to the Commission's proposals regarding the implementation of Section 623(i) of the Communications Act of 1934, as amended. That provision requires the Commission to design rate regulations to reduce administrative burdens and costs of compliance for systems with fewer than 1,000 subscribers. ARC urges the Commission to implement Section 623(i) by establishing a presumption that, absent a specific showing to the contrary, systems with under 1,000 subscribers have just and reasonable and otherwise lawful rates. In addition, ARC proposes that the Commission establish the same presumption with regard to telephone companies providing cable service to their communities pursuant to the rural system exemption. For the reasons set forth below, this presumption should apply regardless of the number of subscribers served by such systems.

Discussion

I. CABLE SYSTEMS WITH FEWER THAN 1,000 SUBSCRIBERS ARE ENTITLED TO A PRESUMPTION THAT THEIR RATES ARE LAWFUL

The primary thrust of the 1992 Cable Act is the stabilization of cable rates and the prevention of unwarranted cable rate increases. Small systems, particularly exempted rural telephone companies, often do not encounter "effective competition" and, therefore, would face regulation of their basic tier rates along with additional reporting requirements under the regulations that are to be adopted in this proceeding. As recognized by the Commission in its NPRM, small system operators face relatively higher per-customer costs due to the small

customer base over which these costs may be spread and the fact that construction often occurs in sparsely populated areas. Thus, the Commission queried whether a presumption of lawful rates would be appropriate recognizing the fact that small systems are "unlikely to be earning returns or charging rates that could be effectively altered to the benefit of subscribers through regulatory oversight."² Further, the Commission recognized that small systems "tend to have higher costs and to have lower rates." Id.

If these facts are given their proper weight, the Commission cannot fail adopt the presumption requested herein. In the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq., Congress found that "uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses."³ Section 2(b) of the Regulatory Flexibility Act prohibits regulatory action unless the potential benefits to society outweigh the potential costs, while Section 2(d) requires that agencies faced with alternative regulatory paths must choose the alternative involving the least cost to society. When applied to the issues presented herein, these standards clearly mandate the presumption that rates charged by small systems are lawful and reasonable under the circumstances. Regulations which are unlikely to alter rates to the benefit of subscribers and that would, in fact, cause rates to increase or threaten the continued provision of cable service cannot be adopted consistent with the provisions and findings of the Regulatory Flexibility Act and would be inconsistent with the main goals of the 1992 Cable Act.

² NPRM at ¶ 131.

³ Regulatory Flexibility Act, Section 1(a)(3).

II. TELEPHONE COMPANIES' RURAL CABLE SERVICE RATES SHOULD BE PRESUMED LAWFUL ON SEPARATE GROUNDS

Prior to 1981, the Commission required telephone companies desiring to provide cable service to their rural communities to file petitions requesting waiver of the Commission's telco/cable cross ownership rules. Waivers were available in the first instance because rural areas had insufficient customer bases to attract traditional cable providers. The large majority of these petitions were unopposed and, upon a proper showing, were routinely granted. However, the Commission determined in In re Elimination of the Telephone Company - Cable Television Cross-Ownership Rules, 50 RR 2d 845 (1981), that the waiver petition process, even when unopposed, placed "considerable burden(s) upon both rural telephone companies and the Commission." 50 RR 2d 851. The expense of obtaining legal, engineering and other assistance, inter alia, was deemed too great an impediment to rural community access to broadband services. Therefore, the Commission removed the necessity of petitioning for waiver in the case of qualifying rural communities and it established the exemption/certification process set forth in Section 63.58 of the rules, 47 C.F.R. §63.58.

By granting cable service exemptions to rural telephone companies the Commission recognized that the provision of cable service by these companies serves the public interest in encouraging the extension of cable service into areas which otherwise may go unserved due to extraordinarily high per-customer costs and other impediments, or, at least, encounter substantial delays in receiving cable service. As discussed above, the adoption of rate regulations clearly stand to increase the cost of providing cable service. As the number of subscribers declines, the per-subscriber cost is more likely to increase, and additional costs from regulation could result in the loss of service altogether. Thus, ARC submits that establishing

a presumption that rural telephone company cable rates are lawful is necessary in furtherance of the public interest, just as the elimination of the telco/cable waiver requirement was necessary in order to maintain and encourage rural access to broadband services.

Further, ARC submits that telco companies operating cable systems are entitled to this presumption regardless of the number of subscribers served. Since rural exemptions are available only to companies providing service in areas that are lightly populated, there is an inherent limit on the number of subscribers a telco/cable company may serve. Thus, the same rationale for small (few than 1000 subscribers) should apply. Rural telco/cable operators should still be entitled to presumption of lawful rates. Therefore, regardless of the number of subscribers, provision of cable service by rural telcos should not be threatened by the addition of rate regulation without any clear and unambiguous corresponding public benefit. ARC therefore urges that rural telco/cable companies should effectively be exempt from rate regulation because it is inconsistent with the rationale upon which such companies were authorized initially to provide cable service.

Finally, application of the Regulatory Flexibility Act requires adoption of the presumption of lawful rates for telcos operating cable systems pursuant to rural exemptions. The Commission has already noted the strong public interest in the extension of broadband services into rural areas. Such extensions will be threatened, if not halted by the advent of rate regulation. Areas currently receiving cable service may face increased rates making continuing service unfeasible. As shown above, rate regulation has little potential to benefit subscribers, but may well impair continued rural service. Therefore, in the absence of any public benefit

resulting from rate regulation of these companies, application of the provisions of the Regulatory Flexibility Act mandates the requested presumption.

Conclusion

Small rural telco/cable systems provide greatly needed service to their communities, and have provided service at just and reasonable rates. These companies have the telco "ethic" of just and reasonable rates and high "telco-like" service quality. Thus, the imposition of rate regulations upon these companies will only serve to raise rates; a result contrary to the general thrust of the 1992 Cable Act. Imposing rate regulations on these companies would not benefit the public, and, in fact, may operate to subscribers' detriment. Therefore, the Commission must follow the dictates of the Regulatory Flexibility Act and adopt the presumption that cable systems with fewer than 1,000 subscribers have just, reasonable and otherwise lawful rates.

Further, the Commission should adopt the presumption of lawful, just and reasonable rates for telephone companies operating cable systems pursuant to a rural service exemption. As noted above, adoption of the presumption is the only action consistent with the Regulatory Flexibility Act, and the rationale and purpose for adoption of the rural exemption. Any other course would threaten the continued provision of service to these areas at affordable

rates, and runs counter to the Commission's clear statement of policy promoting the extension of broadband service into rural areas.

Respectfully submitted,

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January 27, 1993

CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 27th day of January, 1993, copies of the foregoing "Comments of Adhoc Rural Consortium" have been served either by hand delivery or first-class United States mail, postage prepaid, upon the following:

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